THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

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WRIT PETITION NO.18005 of 1999

11th July 2006

Between:

D.Subbaiah, S/o.Subbanna, Working as Senior Assistant in the Office of Assistant Director, Regional Office of Drug Control, Cuddapah.

...PETITIONER

AND

1. The Inspector General of Drugs and Copyright, Drug Control Administration, Vengalaraonagar, Hyderabad.

And two others.

...RESPONDENTS

THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.18005 of 1999

ORDER: (Per the Hon'ble Mr Justice Ramesh Ranganathan)

Aggrieved by the order of the A.P.Administrative Tribunal, Hyderabad ('the Tribunal' for brevity) in O.A.No.3113 of 1999 dated 18.08.1999; the present Writ Petition is filed.

Facts, in brief, are that the third respondent was appointed as a Junior Assistant on 01.02.1985 under the meritorious Sportsmen Quota under G.O.Ms.No.115 General Administration (Services-A) Department dated 21.02.1977. The third respondent joined duty in the office of the second respondent on 14.02.1985. His services were regularized on 17.11.1985. The petitioner was appointed as a Junior Assistant in the office of the second respondent on his selection through the A.P.P.S.C., on 09.05.1985. The second respondent published a Seniority List of Junior Assistants on 27.05.1996 wherein

the petitioner was shown at Sl.No.3 and the third respondent was shown at Sl.No.2. The said provisional Seniority List also indicates that the third respondent was appointed under G.O.Ms.No.115 dated 21.02.1977. As no objections were raised the provisional Seniority List dated 27.05.1996 was finalized and confirmed. On 17.12.1996, the third respondent was promoted to the post of Senior Assistant. The petitioner submitted a representation on 07.01.1998 raising objections with regard to the third respondent being posted in the office of the second respondent and his promotion to the post of Senior Assistant.

The petitioner filed O.A.No.502 of 1998 questioning the appointment of the third respondent as contrary to G.O.Ms.No.115 dated 21.02.1977 and his promotion as Senior Assistant ignoring the seniority of the petitioner. The Tribunal by order dated 09.02.1998, disposed of the O.A. directing the first respondent to dispose of the representation dated 07.01.1998 submitted by the petitioner. On 07.04.1998, while disposing of the said representation, the first respondent posted the third respondent as Senior Assistant in the Office of the Directorate in an existing vacancy. Aggrieved thereby, the third respondent filed O.A.No.2859 of 1998 questioning his posting in the Directorate vide proceedings dated 07.04.1998. The said O.A.

was disposed of with a direction to respondent Nos.1 and 2 to give posting to the third respondent at any suitable place. Consequently, the third respondent was again posting in the office of the second respondent vide proceedings dated 06.08.1998.

O.A.No.2572 of 1998, filed by certain other affected employees, was disposed of on 13.12.1998 with a direction to the first respondent to give notice to all the affected parties and pass orders on their representations. The Tribunal clarified that the transfer orders would not be effective till orders were passed by the first respondent on the representation of the employees dated 07.04.1998. In compliance with the orders of the Tribunal, in O.A.No.2572 of 1998, the first respondent issued notices and the third respondent submitted his objections on 03.03.1999. Consequent thereto, the first respondent posted the third respondent as Senior Assistant in the office of the first respondent vide proceedings dated 28/29.05.1999. Aggrieved thereby, the third respondent filed O.A.No.3113 of 1999 questioning the proceedings dated 28.05.1999. By order dated 18.08.1999 the Tribunal held that the petitioner herein had kept quiet for thirteen years, that his challenge to the appointment of the third respondent was belated and

consequently the proceedings of the first respondent dated 28/29.05.1999 was set aside. Aggrieved by the order of the Tribunal, the present Writ Petition is filed.

Sri J.R.Manohara Rao, learned counsel for the petitioner, would submit that the petitioner was not aware of the fact that the third respondent was appointed under G.O.Ms.No.115 dated 21.02.1977 till the provisional Seniority List dated 27.05.1996 was published and as such the finding of the Tribunal that the petitioner kept quiet for thirteen long years is erroneous. Learned counsel would refer to para No.2 (1) of G.O.Ms.No.115 dated 21.02.1977 whereunder it is provided that one post in the office of the Head of the Department and Secretariat is reserved for meritorious sportsmen. G.O.Ms.No.115 dated 21.02.1977 required the third respondent, on his appointment as a Junior Assistant, to be posted at the Head Office. The petitioner, as the next senior most Junior Assistant in the office of the second respondent would have been automatically eligible for promotion, if the third respondent had been posted in the office of the first respondent instead of in the office of the second respondent. In view of the fact that the third respondent was posted in the office of the second respondent, the petitioner was denied promotion.

This Court by order dated 24.08.1999 in W.P.M.P.No.22461 of 1999 granted interim suspension of the order of the Tribunal in O.A.No.3113 of 1999. Pursuant thereto, the petitioner is said to be continuing to work in the office of the second respondent for the past thirteen years. The petitioner has also been subsequently promoted as a Senior Assistant while working in the office of the second respondent. The third respondent is also working as a Senior Assistant in the office of the first respondent ever since then.

While G.O.Ms.No.115 dated 21.02.1977 required meritorious sportsmen to be posted to the office of the first respondent on their appointment as Junior Assistant, no statutory rule or administrative instruction governing their transfer from one department to another, has been brought to the notice of this Court. Since the petitioner has been working in the office of the second respondent for the past thirteen years, it is appropriate that the first respondent takes an independent view of the matter, in accordance with law, uninfluenced by any observations made either by the Tribunal in the main O.A. or by this Court, and take a decision as to place in which the petitioner and the third respondent should be posted as Senior Assistants. The first

respondent shall complete this exercise within a period of three (3) months from the date of receipt of a copy of this order. Since the petitioner is continuing in the office of the second respondent for the past thirteen years, till a final decision is taken by the first respondent in this regard, the petitioner shall be permitted to continue at his present place of posting.

The Writ Petition is accordingly disposed of. However, in the circumstances, without costs.

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(B.PRAKASH RAO, J)

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(RAMESH RANGANATHAN, J)

11th July 2006

NOTE: CC by one week
B/O
RRB